



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 14, 1997

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR97-0051

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102901.

You explain that the City of Houston (the "city") is the subject of an on-going investigation originated by the U.S. Department of Housing and Urban Development ("HUD") that stems from complaints of racial and economic discrimination with regard to certain of the city's neighborhood traffic projects. The city has received two open records requests for certain records pertaining to some of those complaints. One of the requests seeks records pertaining to the "Neighborhood Traffic Project #5057-96 Maplewood South/North." This office has previously issued an open records decision regarding those records. *See* Open Records Letter No. 96-1798 (1996). Accordingly, we need not further address the public nature of those records. *See* Gov't Code § 552.301(a).

The other request seeks records pertaining to the closure of streets in the Briarmeadow subdivision. You state that the city has made much of the requested information available to the requestor, but you seek to withhold, pursuant to section 552.103 of the Government Code, certain documents ("Exhibit 3") pertaining to the city's decision-making process regarding the approval or denial of requested street closures.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open

Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In accordance with other open records letters this office has issued to the city with regard to similar matters, we conclude that you have met your burden in establishing that the requested records "relate" to reasonably anticipated litigation. *See* Open Records Letter Nos. 96-1798 (1996), 95-687 (1995), 95-656 (1995), 95-545 (1995), 95-544 (1995). Further, based on your representation that HUD personnel have not seen the records at issue here, we conclude that the city may withhold Exhibit 3 in its entirety pursuant to section 552.103 of the Government Code¹ until such time that the records are shared with HUD or until the litigation has concluded.²

You also seek to withhold pursuant to section 552.101 of the Government Code two draft conciliation agreements exchanged between the city and HUD. You contend that these two records are made confidential by federal regulation. *See generally* Open Records Decision No. 476 (1987) and authorities cited therein (federal regulations adopted pursuant to statutory authority provide statutory confidentiality for purposes of statutory predecessor to section 552.101). Title 24, section 103.330(a) of the Code of Federal Regulations provides that, except in circumstances not relevant here, "nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under Part 180 or in civil actions under Title VIII of the Fair Housing Act, without the written consent of the persons concerned." We agree that the draft conciliation agreements are made confidential under 24 C.F.R. § 103.330(a) and therefore must be withheld at this time pursuant to section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

¹In reaching our conclusion here, we assume that the "representative sample" of records contained in Exhibit 3 is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Because we resolve this aspect of your request under section 552.103, we need not address at this time the other exceptions you have raised for Exhibit 3. If the city receives another open records request for these materials subsequent to the termination of the litigation, you may resubmit your other arguments for non-disclosure at that time.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/ch

Ref.: ID# 102901

Enclosures: Submitted documents

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